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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Mark J. Schwartz,	)	No. CIV-01-2075-PHX-MHM
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
vs.	)	
	)	
Metropolitan Life Insurance Company, a)	)	
New York corporation; American Express)	)	
Long Term Disability (LTD) Benefit Plan,	)	
	)	
Defendants.	)	
	)	

Plaintiff has asserted a claim for disability benefits under an employee welfare benefit plan governed by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, et seq. Defendants are Metropolitan Life Insurance Company ("MetLife") and American Express Long Term Disability Benefit Plan. This case is before the Court following remand from the Court of Appeals for the Ninth Circuit. The Ninth Circuit reversed and remanded with instructions to apply a de novo standard of review. (Doc. 53). The Court previously considered this case on the parties' cross-motions for summary judgment. The Court issued an Order denying the cross-motions for summary judgment and indicating that trial on the administrative record was appropriate. (Doc. 68).

1 The parties have submitted proposed findings of fact and conclusions of law. (Doc.  
 2 74 & 75). The Court has considered the parties' submissions and reviewed the administrative  
 3 record (Doc. 73) and now issues its findings of fact and conclusions of law. Fed.R.Civ.P.  
 4 52(a). See, Kearney v. Standard Ins. Co., 175 F.3d 1084, 1095 (9<sup>th</sup> Cir. 1999).

## 5 I.

### 6 Findings of Fact.

#### 7 A. Relevant Plan Provisions.

8 Plaintiff was a participant in the American Express Employee Benefits Plan (the  
 9 "Plan") which provided long-term disability ("LTD") coverage through a group disability  
 10 insurance policy purchased from MetLife. The Plan is governed by ERISA. Pursuant to the  
 11 terms of the Plan, a person who is enrolled in the LTD Benefit Plan and who has been totally  
 12 disabled and prevented from working for six consecutive months is eligible to apply for  
 13 monthly LTD benefits following that six-month period.

14 The Plan provides "own occupation" coverage for the first 24 months that benefits are  
 15 payable and states in part as follows:

16 You are considered totally disabled and eligible to apply for  
 17 LTD Benefit Plan benefits if, during the six-month waiting  
 18 period and the first two years that benefits are payable, you are  
 19 unable to perform any and every duty of your own occupation  
 due to a medically determined physical or mental impairment  
 caused by sickness, disease, injury or pregnancy. You must  
 require the regular care and attendance of a doctor.

20 After the first two years, coverage is provided under the "any occupation" standard and the  
 21 Plan provision relevant to this coverage provides as follows:

22 To receive benefits after the first two years that benefits are  
 23 payable, you must be under the care and attendance of a licensed  
 24 physician and your disability must prevent you from engaging  
 25 in each of the material duties of any gainful work or service for  
 which you are reasonably qualified, taking into consideration  
 your training, education, experience and past earnings (except  
 rehabilitative employment).

26 The Plan provides that if a person becomes totally disabled before age 60, benefits  
 27 will continue as long as the person is totally disabled, up to age 65 "(unless [the person] [is]  
 28

1 disabled due to mental illness, as defined ...") in another section of the Plan. The Plan  
 2 provides limited coverage for disability due to mental illness as follows:

3 If you are disabled due to mental illness, benefits are limited to  
 4 24 months if treatment is rendered on an outpatient basis ... If  
 5 you do not return to work at the end of the 24-month period ...  
 your LTD coverage will end. Mental illness is defined as a  
 mental, emotional or nervous condition of any kind.

6 The Plan's provisions set forth the procedures for filing claims and review of claims  
 7 for benefits, including an appeal if a claim is denied. In addition, "[T]he plan administrator  
 8 has the exclusive right to interpret the provisions of the plan and its decision is final,  
 9 conclusive and binding (except as otherwise provided in the plan or by law)." With respect  
 10 to proof of any claim, the Plan provides:

11 The claims administrator reserves the right to require  
 12 verification of any alleged fact or assertion pertaining to any  
 13 claim for benefits. For example, as part of the basis for  
 determining health care benefits, the claims administrator may  
 require submission of medical summaries, discharge reports, X-  
 rays or other appropriate materials.

14 Plaintiff has provided evidence, based on deposition testimony of Defendants' official  
 15 Laura Sullivan, that if a disability involves a combination of physical and mental conditions,  
 16 MetLife's initial assessment focuses on whether the person is disabled overall. If the Plan  
 17 contains a 24-month limitation for mental/nervous conditions, such as the Plan at issue in this  
 18 case, MetLife continues to investigate to determine whether both conditions are disabling or  
 19 the nature of the actual cause of the condition. Ms. Sullivan further testified that if the  
 20 claimant is disabled by both mental and physical conditions, though neither alone is  
 21 disabling, benefits are payable beyond the 24-month period as stated in the Plan for "mental  
 22 illness." Plaintiff further has provided information through the testimony of MetLife's  
 23 employees and officials that MetLife's case managers and appeal specialists do not have any  
 24 medical training except in general medical terminology.

25 B. Plaintiff's Condition and Application for Benefits.

26 Plaintiff is an accountant with a history of hypertension (high blood pressure), high  
 27 cholesterol, and coronary artery disease ("CAD"). On January 30, 1999, at the age of 51,  
 28

1 Plaintiff underwent four-vessel coronary artery bypass surgery. On February 17, 1999, Dr.  
2 Andrei Damian, Plaintiff's cardiologist, noted that Plaintiff had done "well" regarding his  
3 surgery and was discharged with an "excellent post surgical recovery." Dr. Damian noted  
4 that stress and anxiety experienced at work had contributed to Plaintiff's cardiac condition  
5 and he was initially scheduled to return to work on a part-time "trial" basis. Dr. Damian also  
6 referred Plaintiff to a hospital-based cardiac rehabilitation program. It was noted in this  
7 rehabilitation plan that Plaintiff has a family history of early onset heart problems. The plan  
8 focused on stress reduction as a rehabilitation goal.

9 On March 11, 1999, Plaintiff's internist, Dr. Jack Poles, noted that Plaintiff's blood  
10 pressure and general examination were "unremarkable." A treadmill stress test on March 17,  
11 1999, had "normal results", with no subjective or objective evidence of coronary artery  
12 disease, no arrhythmias and excellent exercise capacity.

13 However, shortly after surgery, Plaintiff began to experience exaggerated  
14 psychological anxiety. On April 14, 1999, Plaintiff had his first appointment with Dr. David  
15 Boyer, a psychiatrist, who diagnosed him as suffering from "post bypass anxiety syndrome."  
16 Plaintiff was released to return to work based on his physical recovery and returned to work  
17 part-time on April 15, 1999. In a Rehabilitation Services Report dated April 15, 1999,  
18 Plaintiff's physical therapist indicated that Plaintiff has said that stress was a contributing  
19 factor.

20 On June 14, 1999, a nurse's note indicated that Plaintiff had reported that his blood  
21 pressure had become elevated and fluctuated and he experienced dizziness, palpitations, chest  
22 pain and fatigue.

23 On June 16, 1999, Dr. Poles reported that Plaintiff had been having a difficult time  
24 with returning to work and that he lacked energy. Dr. Poles determined that Plaintiff needed  
25 to be on total disability. Plaintiff ceased working permanently on June 16, 1999. On June  
26 17, 1999, Dr. Poles wrote in a letter to Dr. Damian that Plaintiff's EKG was "unremarkable"  
27 and that he suspected Plaintiff's condition was "more stress related." Dr. Poles noted that  
28 Plaintiff's blood pressure was high. Dr. Poles recommended "total disability", reporting to

1 Plaintiff's employer that Plaintiff was unable to perform his job and that this condition would  
2 continue "indefinitely."

3 On June 18, 1999, Dr. Damian's progress note indicated that Plaintiff was  
4 "struggling" with anxiety and depression. Dr. Damian stated that he believed that "part of  
5 his symptoms are related to intermittent hypertension up to 150/102." In June 1999,  
6 Plaintiff's Holter Monitor results (a 24-hour test that monitored Plaintiff's heart rate)  
7 revealed underlying sinus rhythm with normal heart rate variability.

8 On June 25, 1999, Dr. Damian wrote to Dr. Poles that with medical management  
9 Plaintiff's blood pressure had remained down. However, Dr. Damian noted "documented  
10 clear evidence of hypertension and a blood pressure of 151/102." Dr. Damian expressed  
11 concern about the development of Plaintiff's post bypass graft depression and anxiety, noting  
12 that Plaintiff was currently undergoing psychotherapy. Dr. Damian did not believe Plaintiff  
13 could return to work. A 24-hour Holter monitor had not revealed any evidence of malignant  
14 dysrhythmia. On June 30, 1999, Dr. Damian reported to Plaintiff's employer that Plaintiff  
15 suffered from depression, stress intolerance and labile hypertension related to anxiety, and  
16 that he was unable to interact effectively with clients.

17 On July 15, 1999, Plaintiff's Nuclear Stress Test revealed an EKG portion with  
18 excellent exercise capacity and heart rate attainment. There was no suggestion of ischemia  
19 and the gated wall motion analysis revealed normal left ventricular function. On July 27,  
20 1999, Dr. Damian reported that Plaintiff had excellent exercise capacity and documented an  
21 excellent anatomical recovery but that stress and related symptoms including post bypass  
22 anxiety prevented him from returning to routine employment. On September 16, 1999, Dr.  
23 Poles reported that Plaintiff's symptoms seemed under control because he was not working  
24 and that his physicians had concluded that he could not again work in his usual capacity  
25 because of his reaction to job stress.

26 On October 13, 1999, Plaintiff complained to Dr. Damian of nonspecific chest  
27 discomfort that did not appear cardiac in description. Dr. Damian reported an abnormal  
28 finding that Plaintiff's blood pressure was 180/120; however, there was no evidence of

1 congestive heart failure or cardiac gallop. It was noted that Plaintiff was unable to deal  
2 appropriately with stressful situations without putting himself at risk. On this same date, Dr.  
3 Damian reported to the Social Security Administration that Plaintiff had "wonderful  
4 improvement" following his heart treatment but he did not believe that Plaintiff could return  
5 to a gainful employment, noting that Plaintiff is "affected negatively by any interaction with  
6 humanity, stress, or responsible work and accountability which will only compromise his life  
7 span." Dr. Damian wrote that Plaintiff had "developed significant anxiety post bypass  
8 surgery which is consistent with post bypass stress and anxiety syndrome which appears  
9 exacerbated continually with the severe presence of hypertension."

10 On October 14, 1999, MetLife wrote Plaintiff advising that he might be eligible for  
11 LTD benefits and requested completion of a number of forms which were enclosed. On  
12 October 25, 1999, Plaintiff completed a Statement of Claim requesting LTD benefits under  
13 the Policy.

14 On October 29, 1999, Dr. Poles reported that Plaintiff "clearly cannot perform at work  
15 due to severe anxiety ..." On October 31, 1999, Dr. Poles completed an Attending Physician  
16 Statement and Physical Capacities Evaluation for MetLife, stating that Plaintiff suffered from  
17 coronary disease, anxiety, chest pain, sweats and palpitations. Dr. Poles indicated that  
18 Plaintiff's "problems are anxiety related not due to physical limitations. ..."

19 Dr. Boyer's November 13, 1999 Attending Physician Statement stated that Plaintiff's  
20 psychological functions were at a Class 3-4 (marked limitation) due to "emotional factors  
21 affecting a medical condition-anxiety and depression" and "obsessive compulsive personality  
22 disorder." Dr. Boyer stated that Plaintiff's acute anxiety and depression were expected to  
23 abate, but not his underlying psychophysiologic vulnerability, e.g., significant blood  
24 pressure increases under stress. Dr. Damian's November 17, 1999 Attending Physician  
25 Statement stated that Plaintiff's Psychological Functions were a Class 4 (marked limitations),  
26 but that his Cardiac Functions were only a Class 2 (slight limitations). Dr. Damian stated  
27 that Plaintiff suffered from severe post bypass anxiety syndrome and hypertension and he  
28

1 was unable to engage in gainful activity. On November 22, 1999, MetLife wrote to Dr.  
2 Damian requesting Plaintiff's medical records.

3 On December 5-7, 1999, Plaintiff was self-admitted to the hospital for chest pain but  
4 no cardiac problem was found. Hospital records noted a "status of post bypass graft surgery  
5 with significant symptoms mostly related to post stress anxiety and evidence of hypertension  
6 which remain[ed] out of control until most recently when [Plaintiff] was placed on  
7 continuous beta blockade." A treadmill Cardiolute documented excellent exercise capacity.  
8 Dr. Damian's office visit note for December 27, 1999 stated that control of Plaintiff's blood  
9 pressure had been achieved and Plaintiff did not appear to be under significant stress at that  
10 time.

11 In a January 12, 2000 letter, Dr. Damian responded to Provident Insurance Company  
12 regarding an Independent Medical Exam performed by Dr. Michael Greer. Dr. Damian's  
13 response stated that "[w]hile the objective stress treadmill data suggest an adequate surgical  
14 result and presumes no limitations preventing a return to work ....In my opinion it is clear that  
15 Mr. Schwartz's disability at this point is caused by his post bypass anxiety syndrome and  
16 secondary intermittent uncontrolled hypertension which is acutely exacerbated by his attempt  
17 to return to work..." On January 22, 2001, Plaintiff received a Social Security total disability  
18 award commencing July 1999 with primary diagnosis of "anxiety related disorder" and  
19 secondary diagnosis of "personality disorder."

20 MetLife had Plaintiff's file reviewed by Dr. Jay Lasser, its consulting psychiatrist.  
21 Dr. Lasser noted that Plaintiff wanted to return to work but his perfectionist tendencies and  
22 entrenched personality issues were unlikely amenable to much change. Dr. Lasser  
23 recommended that Plaintiff's file be reviewed by a consultant with expertise in cardiology.  
24 It does not appear that MetLife had a cardiologist review Plaintiff's file.

25 On February 17, 2000, a MetLife official reviewed Plaintiff's claim as a high liability  
26 claim. The information on the review form indicated that Plaintiff's diagnosis was  
27 "cardiovascular disease, anxiety, depression" and stated that "because of significant anxiety  
28



1 disorder and personality components it is highly unlikely [Plaintiff] will improve enough to  
2 return to any occupation."

3 On February 25, 2000, MetLife informed Plaintiff that his LTD claim had been  
4 approved as a mental/nervous condition starting July 29, 1999 (the end of the six-month  
5 elimination period) and that he was eligible to receive Plan benefits for 24 months, through  
6 July 29, 2001, if he remained disabled. Plaintiff was re-notified of this information on April  
7 28, 2000 and May 15, 2000. On February 28, 2000, MetLife requested all of Plaintiff's  
8 medical records from Dr. Damian.

9 On March 22, 2000, Dr. Damian wrote Dr. Poles that Plaintiff had recently blacked  
10 out and he possibly was experiencing orthostatic changes. Dr. Damian recommended concern  
11 over possible transitory bradycardia or a heart block. Dr. Damian was not concerned with  
12 hypertension at the present time. On March 29, 2000, Dr. Damian wrote Dr. Poles that a 24  
13 hour Holter monitor documented a sinus rhythm with a first degree AV block and absence  
14 of any significant periods of bradyarrhythmias. A change in medication had resulted in  
15 Plaintiff's improved condition, noting that he was essentially asymptomatic.

16 Dr. Poles' Attending Physician Statement dated May 28, 2000 stated that Plaintiff had  
17 "anxiety related symptoms not physically impaired." Plaintiff's diagnoses were listed as  
18 including coronary disease, hypertension, anxiety at work, chest pain, sweats, and  
19 palpitations. Dr. Poles noted that Plaintiff could not deal with stressful situations. Dr.  
20 Damian's May 31, 2000 Attending Physician Statement discussed Plaintiff's coronary artery  
21 disease, hypertension and inability to engage in stress situations or interpersonal  
22 relationships. Dr. Boyer completed an Attending Physician Statement and supplemental  
23 questionnaire on June 1, 2000 which indicated that Plaintiff "is unable to cope with the stress  
24 of his career" and that he is unable to return to work.

25 On June 10, 2000, Plaintiff completed an Activities of Daily Living form in which he  
26 stated that stressful situations caused an increase in his blood pressure and that he had trouble  
27 concentrating. Plaintiff stated he had had to scale back his volunteer work.



1 In June 2000, Dr. Damian wrote that Plaintiff's blood pressure was well controlled  
2 "in the absence of any active excitement." Dr. Boyer noted that Plaintiff had increased blood  
3 pressure as a result of an incident when he misplaced his volunteer badge at the hospital. In  
4 September 2000, Dr. Damian reported that even with minimal stress and anxiety, Plaintiff  
5 was experiencing significant hypertension, and that a recent discussion concerning his  
6 financial circumstances caused his blood pressure to become elevated.

7 On November 1, 2000, Dr. Poles reported that Plaintiff is "doing well from the  
8 cardiovascular point of view except that he gets occasional stress-induced chest pain which  
9 [Plaintiff] does not think is cardiac." Dr. Poles stated that Plaintiff suffered from chest pain,  
10 difficulty breathing, and hypertension when under stress due to such things as financial  
11 concerns.

12 On November 2, 2000, Plaintiff was admitted to the hospital for chest pain.  
13 Examination revealed no active disease in the chest. A stress test revealed excellent  
14 functional capacity, mild hypertensive response to exercise, and normal ST segment response  
15 to exercise. A cardiac ultrasound revealed trivial mitral and tricuspid regurgitation and an  
16 otherwise unremarkable 2-d, M-mode and Doppler examination.

17 Dr. Damian's December 10, 2000 chart note stated that Plaintiff's catheterization  
18 revealed that his disease had progressed to the point of "total occlusion of the LAD [left  
19 anterior descending artery] with no flow via the graft in that distribution."  
20 On January 11, 2001, Dr. Damian wrote Dr. Poles that Plaintiff had "evidence of progression  
21 of cardiac disease with angina induced by stress and anxiety and difficulty in documenting  
22 objectively the presence of active cardiac disease with a treadmill stress test."

23 On January 11, 2001, MetLife notified Plaintiff that benefits under the mental/nervous  
24 provision would be paid to July 29, 2001. MetLife requested any information that supported  
25 a physical condition that would prevent Plaintiff from working at any occupation.

26 Plaintiff provided MetLife with Dr. Damian's letter dated January 22, 2001 stating that  
27 Plaintiff had "developed symptoms of exertional angina and chest discomfort associated with  
28 hypertension" which was mostly associated "with periods of anxiety, stress and anger related

1 to his communications with the insurance company regarding his disability policy." Dr.  
2 Damian wrote that "[i]t is clear that any work related interaction, stress, or anxiety does  
3 cause [Plaintiff] profound symptoms and elevated blood pressure which are known to cause  
4 plaque rupture, vasoconstriction, and progression of disease." Dr. Damian indicated that a  
5 recent catheterization had documented the progression of aggressive cardiac disease as  
6 described in the letter. Dr. Damian expressed the opinion that Plaintiff was at "a very high  
7 risk" for progression of disease and he should be on total disability while attempting to  
8 control such progression.

9 In a February 20, 2001 office note, Dr. Damian reported that Plaintiff had some  
10 "atypical episodes of chest pain which are probably musculoskeletal ... without any evidence  
11 of congestive heart failure."

12 Plaintiff's pre-termination of benefits appeal was received by MetLife on February  
13 26, 2001. In March 2001, MetLife requested additional information/medical records from  
14 Dr. Damian and from two of Plaintiff's medical providers.

15 On March 20, 2001, Dr. Damian reported that Plaintiff had presented with atypical  
16 chest pain, mostly on the right side associated with stress and anxiety related to his father's  
17 illness. Dr. Damian did not believe that Plaintiff was exhibiting the presence of new  
18 progressive coronary artery disease. On March 29, 2001 Plaintiff underwent a Nuclear Stress  
19 Test at Dr. Damian's office. The test revealed normal cardiac function and excellent exercise  
20 capacity. Dr. Damian's April 2, 2001 office visit note reported that the 24-hour Holter  
21 monitor test was unremarkable, with excellent exercise capacity and absence of myocardial  
22 ischemia. On April 9, 2001, Dr. Damian wrote Dr. Poles that Plaintiff continues to have  
23 atypical but persistent chest discomfort and that there was evidence of residual LAD disease.  
24 Dr. Damian recommended a PTCA/stent. On April 19, 2001, Plaintiff underwent an  
25 angioplasty and stent surgery.

26 On April 12, 2001, MetLife referred Plaintiff's medical records for a Physician  
27 Consultant Review by Amy Hopkins, M.D., MPH, Ph.D. (Board Certified in Internal  
28 Medicine and Occupational Medicine, Fellow of the American College of Occupational and

1 Environmental Medicine). Dr. Hopkins reviewed the medical records of Drs. Poles, Damian  
2 and Boyer. Dr. Hopkins expressed the opinion that Plaintiff had developed a host of  
3 psychological problems following his heart surgery in January 1999 but that his blood  
4 pressure recordings since early 2000 had been within normal limits. Plaintiff's cholesterol  
5 and two stress tests also were within normal limits. However, a recent cardiac [catheter] had  
6 shown progression of disease "which is to be expected." Dr. Hopkins noted that Plaintiff has  
7 had atypical chest pain which has not been documented to be of cardiac origin and that  
8 Plaintiff's daily exercise included walking, swimming and golfing. Dr. Hopkins also noted  
9 that Dr. Poles does not feel that Plaintiff had significant limitation and that Plaintiff had not  
10 worked since April 1999 so it could not be presumed that working per se would increase his  
11 blood pressure. Dr. Hopkins found no documented indication of a "cause and effect"  
12 relationship between Plaintiff's working and elevated blood pressure, noting that Plaintiff's  
13 blood pressure had been well controlled since starting a beta blocker and he had not  
14 attempted work since starting his current medication regimen.

15 Dr. Hopkins mentioned that Plaintiff's stress at work increased his cholesterol but "no  
16 such relationship between stress and cholesterol levels has been documented in the medical  
17 literature" and that "stress does not cause, exacerbate, or accelerate [coronary artery  
18 disease]." Dr. Hopkins noted that Plaintiff had held leadership and committee roles in  
19 various organizations, performed volunteer work and functioned adequately outside the  
20 home. Dr. Poles also had recommended that Plaintiff was capable of performing at a medium  
21 work capacity physically. Dr. Hopkins' final recommendation was that no physical  
22 impairments had been documented which precluded Plaintiff from returning to work full time  
23 as to any occupation up to and including medium work capacity.

24 On April 19, 2001, MetLife wrote Drs. Poles and Damian advising that Plaintiff was  
25 being paid LTD benefits under a mental/nervous contractual provision which expired on July  
26 29, 2001. MetLife included Dr. Hopkins' findings and stated that Drs. Poles and Damian  
27 were being afforded an opportunity to comment.  
28

1 On April 23, 2001, Dr. Poles responded to MetLife regarding Dr. Hopkins'  
2 evaluation. Dr. Poles stated that, although Dr. Hopkins' evaluation of Plaintiff's physical  
3 problems was correct, Plaintiff could not psychologically return to his previous occupation  
4 and that attempts at doing so would precipitate chest pain, anxiety, and total dysfunctionality.  
5 Dr. Poles stated that Plaintiff had residual disease in his left anterior descending artery of at  
6 least 60 to 70 percent.

7 On May 10, 2001, Plaintiff advised MetLife that he had undergone an angioplasty and  
8 stent surgery on April 19, 2001. During Plaintiff's May 15, 2001 office visit, Dr. Damian  
9 noted that Plaintiff had had a stent/angioplasty and had "remained free of symptoms since  
10 the procedure [had been] performed."

11 On July 9, 2001, Dr. Damian wrote to MetLife in response to Dr. Hopkins' review,  
12 stating that he did not totally disagree with Dr. Poles who had indicated that Plaintiff was  
13 capable of performing at a medium work capacity physically. Dr. Damian stated that the  
14 problem was not necessarily Plaintiff's physical condition but his mental condition and his  
15 mental ability to deal with the requirements at work, stress, anxiety, and all in perspective  
16 of what had occurred after his unexpected bypass surgery and progression of disease. Dr.  
17 Damian reported that Dr. Hopkins was incorrect in her assessment that "progression of  
18 cardiac disease can be expected" after bypass surgery. Rather, in his opinion, progression is  
19 generally not expected within the first year or two following bypass surgery in patients as  
20 young as Plaintiff. Dr. Damian noted that Plaintiff's chest pain had been documented to be  
21 of cardiac origin because it had subsided after the angioplasty and stent replacement.

22 On July 18, 2001, MetLife advised Plaintiff that it had reaffirmed the determination  
23 that his disability was a mental/nervous condition and that benefits would expire on July 29,  
24 2001. MetLife explained that Dr. Boyer had provided documentation which supported a  
25 mental condition and therefore benefits had been paid on that condition. The letter further  
26 explained that Plaintiff's doctors and MetLife's independent physician consultant had  
27 seemed to agree that while Plaintiff has a cardiac condition, it did not physically restrict or  
28 limit Plaintiff's function as to preclude his ability to return to his former occupation or other

1 occupation up to a medium level of work capacity. Plaintiff was advised of his appeal rights  
2 in this letter.

3 On July 19, 2001, Plaintiff submitted a letter from Dr. Damian dated July 18, 2001 to  
4 MetLife. Dr. Damian stated in this letter that, post bypass graft surgery, Plaintiff had been  
5 documented to have progressive symptoms of depression and anxiety consistent with well-  
6 established syndrome. Plaintiff's physical and emotional conditions were jointly contributing  
7 to his progressive cardiac disease and inability to control Plaintiff's blood pressure had been  
8 documented. Dr. Damian opined that Plaintiff was disabled from working in his own  
9 profession or any other profession involving stressful conditions and that if Plaintiff  
10 disregarded his doctors' recommendations not to work, he faced "reasonably certain untimely  
11 demise." Dr. Damian observed that anxiety and emotional stress had been documented in  
12 the medical literature since 1994 as a trigger causing disruption of plaque and progressive  
13 occlusive disease. According to Dr. Damian, returning Plaintiff to his working environment  
14 in his profession or any occupation involving stress would start a "cascade of uncontrolled  
15 events that [would] culminate in uncontrolled hypertension as proven before, secondary and  
16 related anxiety and significant disruption of the plaque with fatal outcome."

17 On July 20, 2001, Plaintiff requested another appeal and MetLife referred the claim  
18 to Dr. Hopkins for review. Dr. Hopkins conducted a second Physician Consultant Review  
19 on August 2, 2001. Dr. Hopkins found that Dr. Damian had not provided any additional  
20 information substantiating that Plaintiff had a physical impairment that would prevent him  
21 from working in any occupation. Dr. Damian further had indicated that the primary problem  
22 was Plaintiff's psychological problems. Dr. Hopkins concluded that no physical impairments  
23 had been documented that would preclude Plaintiff from returning to work full time in any  
24 occupation up to and including a medium work capacity.

25 On August 3, 2001, Plaintiff's file was referred to MetLife's Appeals Department.  
26 On September 12, 2001, Plaintiff's attorney provided additional medical records from  
27 Plaintiff's primary doctors plus records related to Plaintiff's April 19, 2001 hospitalization  
28 for angioplasty and stent surgery. The file and additional medical records were sent to Dr.

1 Hopkins for another review. On September 28, 2001, Dr. Hopkins concluded that Plaintiff  
2 was not precluded by documented physical impairments from returning to work full time up  
3 to and including medium work capacity, stating as follows:

4 [Plaintiff] has had atypical [chest pain] of long-standing  
5 duration, but it has not been documented to be of cardiac origin.  
6 He has not had any CHF [chronic heart failure], significant  
7 arrhythmias, or ongoing ischemia. [Plaintiff's] documented  
8 [blood pressures] in the additional information provided were all  
9 [within normal limits], so Dr. Damian's contention that  
10 [Plaintiff] has uncontrolled [hypertension] is simply not  
11 supported by his own records. It is not clear why he would be  
12 refuting his own [blood pressure] measurements. While  
13 [Plaintiff] may have progressive [coronary artery disease], he  
14 does not have any [symptoms] referable to the cardiac system,  
15 and there is no documented cardiac reason why he cannot  
16 [return to work] in any occupation at up to a medium level work  
17 capacity, at least ... [Plaintiff] clearly had problems w/ stress and  
18 anxiety ... It is not clear why, if Dr. Damian feels that stress is  
19 such a potentially lethal problem in [Plaintiff's] life, he has not  
20 referred [Plaintiff] to some kind of stress management  
21 program.... The determination of impairment is based upon an  
22 individual's current condition, not on what might or might not  
23 potentially happen in future situations. While [Plaintiff's]  
24 anxiety might be impairing him from certain kinds of work, that  
25 cannot be construed as implying that his cardiac condition  
26 would worsen if he returned to work ... No physical impairments  
27 have been documented which preclude [Plaintiff] from [return  
28 to work], [full time], any occupation, at up to and including a  
medium work capacity.

On October 10, 2001, MetLife wrote to Plaintiff's attorney explaining that the  
decision had been upheld on appeal. MetLife stated that "[a]fter [Plaintiff's] bypass surgery,  
Dr. Damian and Dr. Boyer indicated that [Plaintiff] regained the physical capacity to perform  
sedentary work, but was disabled from his own occupation as a result of a mental health  
condition." The reviewer concluded that Plaintiff was not physically disabled as of July 29,  
2001 from performing sedentary-like duties of his own occupation and that there was no  
"objective information" in the record showing that "exposure to work stress represents a  
severe threat to [Plaintiff's] physical health." The letter stated that "in determining disability,  
we base our decision on an individual's current functionality rather than what could  
potentially happen in the future." On October 10, 2001, MetLife informed Plaintiff's

employer that review of Plaintiff's appeal had been completed and that the decision to terminate benefits had been upheld.

Based on the deposition testimony of David Cohen, a MetLife claims/appeals specialist, the policy at page 534 provided that to receive benefits after the first two years benefits are payable, a claimant must be under the care of a licensed physician and the disability must prevent the claimant from engaging in "each of the material duties of any gainful work or service for which [the claimant] [is] reasonably qualified taking into consideration [the claimant's] training, education, and experience, and past earnings, except for rehabilitative employment." This provision does not refer to the claimant's own occupation. The fact that a claimant cannot return to his own occupation is not a bar to the application of the "any occupation" standard. (Cohen Deposition at pages 11-13). In order to investigate the application of this provision, MetLife would investigate and assess the claimant's capabilities. Based on the claimant's capabilities, a vocational determination would be made to determine that jobs are available for the claimant to perform. Mr. Cohen testified that MetLife generally would consider a transferrable skills analysis and possibly a labor market survey. (*id.*, at pages 14-15). A vocational analysis was not performed on Plaintiff's claim. (*id.*, at page 15).

Plaintiff was paid long term disability benefits for a period of twenty-four (24) months from July 29, 1999 to July 29, 2001. The net benefit amount claimed by Plaintiff in this case is \$11,422.33 per month, commencing July 29, 2001.

## II.

## Contentions of the Parties.

Plaintiff contends that benefits were wrongfully terminated on July 29, 2001 based on the following arguments: (1) the "mental illness" language of the type used in the Plan cannot be applied to cases involving mental conditions resulting from physical disorders; (2) he suffers from both aggressive coronary artery disease and maladaptive personality patterns and therefore benefits are payable for a physical, not mental, disability; and, (3) the Plan's disposition contravened its own interpretation that a claimant is not limited to 24 months of



1 benefits if he is disabled by a combination of mental and physical ailments which is the case  
2 here. Plaintiff argues that in light of the undisputed documented evidence, he suffers from  
3 coronary artery disease and that he is disabled as a result of a rapidly deteriorating heart  
4 condition in conjunction with his physiologic reaction to job stress.

5 Defendants contend that based on the undisputed evidence provided by Plaintiff's  
6 treating physicians, but for Plaintiff's psychological conditions, i.e., bypass anxiety disorder,  
7 Plaintiff would not have any disabling symptoms. Defendants further contend that the  
8 evidence supported by the administrative record shows that Plaintiff has fully recovered from  
9 his heart surgery, he suffers from a psychological condition, and therefore MetLife's  
10 termination of benefits based on the mental/nervous limitation was proper.

### 11 III.

#### 12 Conclusions of Law.

13 This Court has jurisdiction over this action pursuant to the Employee Retirement  
14 Income Security Act, 29 U.S.C. § 1001 et seq.

15 This Court's review of Defendants' decision to terminate benefits is de novo. The  
16 district court, in applying the de novo standard of review, must review de novo the plan  
17 administrator's decision to deny benefits. Tremain v. Bell Industries, Inc., 196 F.3d 970, 978  
18 (9<sup>th</sup> Cir. 1999).

19 A district court performing de novo review of an ERISA benefits denial may consider  
20 evidence outside the administrative record as necessary to conduct an adequate de novo  
21 review of the benefit decision. Friedrich v. Intel Corp., 181 F.3d 1105, 1111 (9<sup>th</sup> Cir.  
22 1999)(quoting Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan, 46 F.3d  
23 938, 944 (9<sup>th</sup> Cir. 1995)).

24 Federal courts apply federal common law when faced with questions of policy  
25 interpretation under ERISA. Padfield v. AIG Life Ins. Co., 290 F.3d 1121, 1125 (9<sup>th</sup> Cir.  
26 2002). Under this federal common law, the terms of a plan are given their ordinary and  
27 popular meaning as would a person of average intelligence and experience. Id. A de novo  
28

1 review "'gives no deference at all' to the decisions of insurers to deny benefits." Kearney v.  
2 Standard Ins. Co., 175 F.3d 1084, 1090 n.2 (9<sup>th</sup> Cir. 1999).

3 Plaintiff has the burden of proof to show that he was eligible for continued long term  
4 disability benefits based on the terms and conditions of the ERISA plan. See Sabatino v.  
5 Liberty Life Assurance Co., 286 F. Supp. 2d 1222, 1232 (N.D. Cal. 2003). In a trial on the  
6 administrative record, the Court "can evaluate the persuasiveness of conflicting testimony  
7 and decide which is more likely true." Kearney, 175 F.3d at 1095.

8 In order to receive LTD benefits under the Plan, a claimant must be "unable to  
9 perform any and every duty of [the claimant's] own occupation due to a medically determined  
10 physical or mental impairment caused by sickness, disease, [or] injury ..." The claimant also  
11 must be under the regular care and attendance of a doctor. The Plan further provides that if  
12 a claimant is disabled due to "mental illness," benefits are limited to 24 months if treatment  
13 is rendered on an outpatient basis. The term "mental illness" is defined as "a mental,  
14 emotional or nervous condition of any kind." Evidence in the administrative record shows  
15 that Plaintiff is under the regular care and attendance of his physicians following his coronary  
16 artery bypass surgery in January 1999. The parties do not dispute a finding on this issue in  
17 their briefing.

18 Defendants' argument that the medical evidence of record establishes that Plaintiff  
19 does not have a physical condition because he has fully recovered from his January 1999  
20 heart surgery presents a narrow and constricted view of the evidence and of Plaintiff's  
21 condition. The record medical evidence does contain several references to Plaintiff's exercise  
22 capacity and instances of chest pain that did not appear to be cardiac of origin. However,  
23 Defendants' characterization of the record medical evidence discounts the presence and  
24 seriousness of Plaintiff's cardiac condition/progressive coronary disease and does not present  
25 a full picture of Plaintiff's condition.

26 Plaintiff has a history of hypertension (high blood pressure), high cholesterol and  
27 coronary artery disease. In January 1999, at age of 51, he underwent four-vessel coronary  
28 artery bypass surgery. Although his prognosis for recovery was "excellent," it is undisputed

1 that shortly after surgery, Plaintiff began to experience exaggerated anxiety resulting in a  
2 subsequent diagnosis of "post bypass anxiety syndrome" in April 1999 by Dr. Boyer, a  
3 psychiatrist. Between April and June 1999, Plaintiff attempted to work at his own  
4 occupation of accountant but it appears that stress related to his job was contributing to his  
5 condition. In June, 1999, Plaintiff's cardiologist Dr. Damian expressed the opinion that "part"  
6 of Plaintiff's symptoms were related to intermittent hypertension. Plaintiff's hypertension  
7 was documented about this same time. In June 1999, Dr. Poles, Plaintiff's internist, noted  
8 Plaintiff's high blood pressure and determined that Plaintiff needed to be on total disability.  
9 In October 1999, Dr. Damian wrote that Plaintiff had "developed significant anxiety post  
10 bypass surgery" which was consistent with post bypass stress and anxiety syndrome  
11 "exacerbated continually with the severe presence of hypertension." In November 1999, Dr.  
12 Damian reported to MetLife that Plaintiff had slight limitations regarding his cardiac  
13 functions, marked limitations with his psychological functions and that he suffered from  
14 post-bypass anxiety syndrome and hypertension. Dr. Damian expressed the opinion that  
15 Plaintiff was unable to engage in gainful activity. About this same time, Dr. Boyer expressed  
16 the opinion that Plaintiff's acute anxiety and depression might abate but not his underlying  
17 psychophysiologic vulnerability, that is, significant blood pressure increases when under  
18 stress due to his cardiovascular condition.

19 On February 17, 2000, a MetLife official reviewed Plaintiff's file and noted Plaintiff's  
20 "cardiovascular disease, anxiety, and depression." In March 2000, Dr. Damian expressed  
21 concern about Plaintiff regarding a possible heart block. During 2000, Plaintiff's treating  
22 physicians noted Plaintiff's diagnoses as including coronary disease, hypertension, anxiety  
23 at work, chest pain, etc. In September 2000, Dr. Damian noted that even with minimal stress  
24 and anxiety, Plaintiff was experiencing significant hypertension.

25 In December 2000, Plaintiff's catheterization revealed that his coronary artery  
26 disease/heart condition had progressed to the point of "total occlusion of the [left anterior  
27 descending artery] with no flow via the graft in that distribution." Dr. Damian's January  
28 2001 letter to Dr. Poles reported that Plaintiff had "evidence of progression of cardiac disease

1 with angina induced by stress and anxiety." On January 22, 2001, Dr. Damian wrote that  
2 Plaintiff had developed symptoms of exertional angina and chest discomfort associated with  
3 hypertension which was mostly associated with periods of anxiety, stress and anger. Dr.  
4 Damian also wrote that Plaintiff was at a "very high risk" for progression of disease. In April  
5 2001, Plaintiff underwent an angioplasty and stent surgery. In July 2001, Dr. Damian  
6 advised MetLife that Plaintiff's progressive cardiac disease was not expected. He also stated  
7 that Plaintiff's chest pain had been documented to be of cardiac origin because it had  
8 subsided after the April 2001 stent surgery. According to Dr. Damian, Plaintiff's progression  
9 of cardiac disease with angina induced by stress and anxiety had been difficult to detect with  
10 a treadmill stress test.

11 The record contains numerous opinions and recommendations from Plaintiff's treating  
12 physicians that Plaintiff was unable to return to his own occupation or any profession and  
13 was totally disabled. In June and November 1999, Dr. Damian recommended Plaintiff's total  
14 disability. In January 2001, Dr. Damian recommended to MetLife that Plaintiff's should be  
15 on total disability while attempting to control the progression of his disease. In April 2001,  
16 Dr. Poles wrote to MetLife that Plaintiff could not psychologically return to his previous  
17 occupation and that attempts at doing so would precipitate chest pain, anxiety and total  
18 dysfunctionality. Dr. Poles noted that Plaintiff had residual disease in his left anterior  
19 descending artery of at least 60 to 70 percent. In a letter dated July 2001, Dr. Damian wrote  
20 to MetLife that Plaintiff had physical and emotional conditions that jointly were contributing  
21 to his progressive cardiac disease, again noting inability to control Plaintiff's hypertension.  
22 Dr. Damian opined that Plaintiff was disabled from working in his own profession or any  
23 other profession involving stressful conditions and that Plaintiff's return to work would  
24 endanger his health. While nothing in ERISA suggests that a plan administrator must accord  
25 special deference to the opinions of treating physicians, Black & Decker Disability Plan v.  
26 Nord, 538 U.S. 822, 834, 123 S.Ct. 1965 (2003), a claimant's reliable evidence, including the  
27 opinions of a treating physician, may not be arbitrarily discredited. Id. In the context of  
28 insurance law, "[t]he insured is considered to be ... disabled where it is impossible for him

1 to work without hazarding his health or risking his life.'" Lasser v. Reliance Standard Life  
2 Insurance Co., 146 F. Supp. 2d 619, 628 (D.N.J. 2001)(quoting 1C Appleman Insurance Law  
3 & Practice § 651 at 241 (1981)), aff'd, 344 F.3d 381 (3d Cir. 2003). The evidence in the  
4 administrative record supports the conclusion on this Court's de novo review that Plaintiff  
5 suffers from progressive coronary artery disease, hypertension, post bypass anxiety syndrome  
6 and maladaptive personality patterns and that his physicians have determined that he is  
7 disabled.

8 Based on the Court's review of the entire administrative record, it cannot be concluded  
9 that Plaintiff has successfully recovered from his heart surgery or progressive cardiac  
10 condition. Defendants' claim to this effect is not supported by a reasonable interpretation of  
11 all of the medical evidence of record. As previously discussed, in December 2000 and  
12 January 2001, Plaintiff's physician noted progression of cardiac disease. In April 2001,  
13 Plaintiff underwent an angioplasty and stent surgery. In July 2001, Dr. Damian advised  
14 MetLife that Plaintiff's progressive cardiac disease was not expected and had been difficult  
15 to detect. MetLife acknowledged Plaintiff's cardiac condition in its July 18, 2001  
16 determination explanation. Dr. Hopkins in her September 2001 evaluation recognized that  
17 Plaintiff "may have" progressive coronary artery disease. The administrative record evidence  
18 does not support the conclusion that Plaintiff is disabled due only to "mental illness" which  
19 is defined as a "mental, emotional or nervous condition of any kind." See, e.g., Mongeluzo,  
20 46 F.3d at 943 ("if either a cause or a symptom of the disease were physical and caused the  
21 disability in whole or in part, then benefits are payable").

22 The Court also has considered Plaintiff's argument that he suffers from a combination  
23 of impairments. The Court has considered the deposition testimony of Defendants' employees  
24 David Cohen and Laura Sullivan. The Court has considered this evidence as necessary to  
25 conduct an adequate de novo review of the benefit decision. Friedrich v. Intel Corp., 181  
26 F.3d 1105, 1111 (9<sup>th</sup> Cir. 1999)(quoting Mongeluzo v. Baxter Travenol Long Term Disability  
27 Benefit Plan, 46 F.3d 938, 944 (9<sup>th</sup> Cir. 1995)). Based on Defendants' own interpretation of  
28 the Plan, if a claimant is disabled by both mental and physical conditions, though neither

1 alone is disabling, benefits are payable beyond the 24-month period as stated in the Plan for  
2 "mental illness." A disability caused by a combination of physical and mental impairments  
3 is not subject to the Plan's mental illness limitation. There is substantial medical evidence  
4 which supports the conclusion that Plaintiff suffers from a combination of impairments, that  
5 is, aggressive coronary artery disease, hypertension, post bypass anxiety syndrome and a type  
6 of personality disorder. Plaintiff's medically documented disability based on a combination  
7 of physical and mental impairments warrants the payment of benefits beyond the 24-month  
8 period.

9       Alternatively, the Court has considered whether the terms of the Plan regarding  
10 "mental illness" and "mental, emotional or nervous condition" are ambiguous. The Ninth  
11 Circuit has recognized that words such as "mental impairment" and "mental disorder" as used  
12 in Plan provisions may be ambiguous. For example in Kunin v. Benefit Trust Life Insurance  
13 Company, 910 F.2d 534, 541 (9<sup>th</sup> Cir. 1990), the Plan contained no definition or explanation  
14 of the term "mental impairment" and offered no illustration of the conditions that are  
15 included or excluded. In Patterson v. Hughes Aircraft Co., 11 F.3d 948 (9<sup>th</sup> Cir. 1993), the  
16 Ninth Circuit found the undefined Plan term "mental disorder" ambiguous in two ways: (1)  
17 the Plan did not specify whether a disability is to be classified as "mental by looking to the  
18 cause of the disability or to its symptoms"; (2) the Plan did not make clear whether a  
19 disability qualified as a "mental disorder" when it results from a combination of physical or  
20 mental factors. Id., at 950. To the extent that a Plan term is ambiguous, it must be construed  
21 against the Plan and in favor of the insured. Lang v. Long-Term Disability Plan of Sponsor  
22 Applied Remote Technology, Inc., 125 F.3d 794, 799 (9<sup>th</sup> Cir. 1997).

23       The Plan defines "mental illness" as a "mental, emotional or nervous condition of any  
24 kind." This definition is imprecise. It is not clear whether the Plan limits benefits based  
25 solely on mental conditions or whether it encompasses long-term disabilities resulting from  
26 a combination of physical and mental impairments. The Plan does not specify whether a  
27 condition classified as "mental" is determined by looking to the cause or to the symptoms.  
28 The Plan's terms therefore appear ambiguous as applied to Plaintiff's claim and must be

1 construed against Defendants and in favor of the Plaintiff on the issue of reinstatement of  
2 benefits.

3 **IV.**

4 **Conclusion.**

5 Based on the file, administrative record and proceedings herein, Plaintiff's condition  
6 is not solely due to a mental disorder limiting the payment of benefits. Defendants contend  
7 that this matter should be remanded to the Claim Administrator for a determination of  
8 whether Plaintiff was totally disabled as of July 29, 2001 from "any job" for which he was  
9 qualified by training, education and experience. (Doc. page 18, n. 3). The Court disagrees.

10 Plaintiff is entitled to receive long-term disability benefits under the Plan reinstated  
11 as of July 29, 2001 to the date of Judgment. Defendants may not avoid liability for past  
12 benefits by arguing that Plaintiff was not disabled for all or part of the period. The  
13 administrative record indicates that Dr. Hopkins recommended in her evaluation assessments  
14 that no physical impairments had been documented which precluded Plaintiff from returning  
15 to work full time as to any occupation up to and including a medium work capacity. This  
16 recommended conclusion was made even though there had been no vocational assessment  
17 relevant to Plaintiff. Defendants' erroneous interpretation of the Plan and of the medical  
18 evidence is responsible for the present situation. Payment of benefits to the date of Judgment  
19 is appropriate because Defendants' obligation to pay future benefits is dependent on  
20 Plaintiff's continued disability. A requirement that Plaintiff obtain a prompt medical  
21 examination to determine continued eligibility is not unreasonable. Plaintiff may file a  
22 motion seeking costs and attorney's fees in accordance with applicable authority, including  
23 statutes and rules, as appropriate, and LRCiv. 54.1 and 54.2, Rules of Practice Civil, District  
24 of Arizona.

25 **Accordingly,**

26 **IT IS ORDERED** that the Court finds in favor of Plaintiff and against Defendants on  
27 Plaintiff's claim for ERISA benefits.



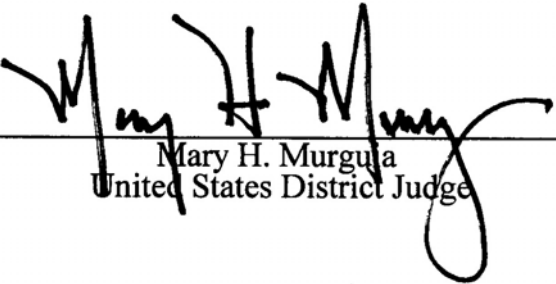
1       **IT IS FURTHER ORDERED** that Defendants shall pay to Plaintiff long term  
2 disability benefits in the amount of \$11,422.33 per month, plus interest as appropriate, under  
3 the terms of the Plan commencing July 29, 2001 up to and through the date of Judgment.

4       **IT IS FURTHER ORDERED** that Judgment shall be entered in favor of Plaintiff on  
5 his claim for ERISA benefits and against Defendants.

6       **IT IS FURTHER ORDERED** that Plaintiff may file a motion seeking costs and  
7 attorney's fees in accordance with applicable authority, including statutes and rules, as  
8 appropriate, and LRCiv. 54.1 and 54.2, Rules of Practice Civil, District of Arizona.

9       DATED this 29<sup>th</sup> day of September, 2006.

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Mary H. Murgula  
United States District Judge